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HOE 90/F 333B
(139*1590)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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ANDREAS WINTER ET AL :

REISSUE OF U.S. PAT. 5,276,208 : Parent Before:

SERIAL NO: : ART UNIT: 1505

FILED: : EXAMINER: Wu

FOR: METALLOCENES CONTAINING LIGANDS OF:
2-SUBSTITUTED INDENYL DERIVATIVES,
PROCESS FOR THEIR PREPARATION AND :
THEIR USE AS CATALYSTS

.....
Hon. Commissioner of Patents & Trademarks
Washington, D.C. 20231

"Express Mail" No.: EF 483978800

Date:

October 17, 1994

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

Diane C. Pickering
(Typed or printed name) of
person mailing paper or fee)

Diane C. Pickering
(Signature of person
mailing paper or fee)

PRELIMINARY COMMUNICATION AND NOTIFICATION
REGARDING STATUS OF CERTIFICATE OF CORRECTION

Sir:

This application is submitted without a Reissue Declaration/Power of Attorney, offer to surrender, and assent of assignee, pursuant to 37 CFR §§1.171 (which provides that reissue applications generally follow the same Rules as applications for an original patent), 1.41(c) (application by

authorized person) and 1.53(b) and 1.53(d) (so-called "incomplete" filing which nevertheless is entitled to the grant of a filing date without the missing parts).

The undersigned attorney is authorized by the applicants and their assignee to file this reissue application. 37 CFR §1.41(c).

The Certificate of Correction and Its Status

Several months prior to this application for reissue, a Certificate of Correction was applied for with respect to the following errors in the original patent:

In column 1, second line of the heading the word "IDENYL" should read --INDENYL--, see the specification as filed, at page 1.

In column 7, in the fourth formula, "R⁵" should read --R⁶--, see the specification as filed at page 10.

In column 14, line 10 "M₂/M₀" should read --M_w/M₀--, see the specification as filed at page 23, at line 9.

In claim 1 (column 15, line 60) "a halogen atom" appears twice, please see the Amendment mailed to the PTO on September 23, 1992, at page 2, seventh line after the formulas.

The editorial errors listed above are believed to be printing errors, attributable to the Patent and Trademark Office.

In claim 9, (column 17, lines 6 and 7), please the phrase "with methyl" should have been deleted. This was the applicants' error. Issued claim 9 corresponds to original claim 14 and has its support in the specification at page 4, lines 20-24, in particular line 22; see column 3, lines 1 to 6 of U.S. '208. It is clear that the term "methyl" in the phrase "R⁵ and R⁶ are preferably (C₁-C₄)-alkyl, which may be halogenated, such as methyl [C₁-alkyl], ethyl [C₂-alkyl], propyl [C₃-alkyl], isopropyl [C₃-alkyl], butyl [C₄-alkyl]...in particular methyl" is referring to the C₁-C₄ alkyl which may be halogenated, not the halogenating agent. It is not possible to halogenate with methyl. Halogenating is performed with a halogen such as fluorine, bromine, chlorine, iodine, etc. Thus, claim 9 as issued is misdescriptive.

The applicants' counsel has contacted the Certificate of Correction Branch of the PTO and has been advised that the Certificate of Correction is still being examined; however, entry or partial entry of the Certificate of Correction is

anticipated within approximately the next two months, or in any event prior to examination of this reissue application. Accordingly, to avoid redundancy and confusion, the errors to be corrected by Certificate of Correction have not been corrected in these reissue papers.

Communication Regarding New Claims

The enclosed application for reissue has original claims 1 to 15, original claim 1 being amended in accordance with the accompanying application papers. (As explained above, minor corrections in claims 1 and 9 are being made by Certificate of Correction.) This reissue application also includes new claims 16, 17, and 18. The applicants for the original patent claimed less than they had a right to claim when they failed to include within the scope of claim 1 compounds of formula I (of claim 1) in which the indenyl or substituted indenyl ligands have not been hydrogenated. New claims 16 to 18 are specifically directed to these indenyl ligand-containing compounds. The indenyl ligand-containing compounds are fully disclosed in the original application as intermediates for the preparation of the corresponding tetrahydroindenyl ligand-

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containing compounds which were claimed. See the original patent, U.S. Patent 5,276,208 ("U.S. '208"), column 4, lines 34 to 67, i.e. preparation method "a", and see *In re Magerlein*, 202 USPQ 473, 479-480 (CCPA 1979). Indenyl-containing ligands having the Formula I structure (except for the un-saturation of the six-member, fused ring of the indenyl ligands) are also disclosed in Comparative Examples, particularly Comparative Examples A through H; see column 14, lines 14 to 43 of U.S. '208.

With regard to substitution of the indenyl or tetrahydroindenyl ligands in the six-member, fused-ring portion of the ligand (i.e. the " R^{10m} substituents), kindly refer to column 3, lines 63 to 66 of U.S. '208, wherein it is pointed out that the R^{10} radicals are defined in the same manner as the R^{11} , R^{12} , and R^{13} radicals and can be, for example, alkyl groups; the terms R^{11} , R^{12} , and R^{13} are in turn defined in column 2, lines 25 to 33 of U.S. '208. With regard to R^{10}

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itself, see also original claim 15 of U.S. '208.

Prompt, favorable action is solicited.

Respectfully submitted,

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